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WP No.18653 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.03.2023

CORAM :

THE HONOURABLE MR.JUSTICE R.MAHADEVAN
and
THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

Writ Petition No.18653 of 2019
and
WMP.No.17982 of 2019

K. Hemalatha

.. Petitioner

Versus

1. Tamilnad Mercantile Bank
Represented by its Authorised Officer
Chennai Regional office
No.45, Pull Avenue, Shenoy Nagar
Chennai - 600 030
2. Regional General Manager
Tamilnad Mercantile Bank
Chennai Regional Office
No.45, Pulla Avenue, Shenoy Nagar
Chennai - 600 030.
3. Branch Head
Tamilnadu Mercantile Bank
Madipakkam Branch
Darshan Complex
I Floor, D.No.1, Vigneshwara Nagar
Madipakkam - Medavakkam High Road
Chennai - 600 030

.. Respondents



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Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the respondents to refund a sum of Rs.3,52,500/- received by the respondents under an auction sale held on 03.01.2019 together with the interest at the rate of 24% per annum from 03.01.2019 till the date of repayment.

For Petitioner : Mr. Victor Prasath
For Respondents : Mr. K.K.Sivashanmugam

ORDER

(Order of the Court was made by R. MAHADEVAN, J.)

The relief sought in this Writ Petition is to issue a Writ of Mandamus directing the respondents to refund the sum of Rs.3,52,500/- paid by her while participating in the auction sale held on 03.01.2019, together with the interest at the rate of 24% per annum from 03.01.2019 till the date of repayment.

2. According to the petitioner, the respondents have published an advertisement on 30.12.2018 in Tamil Daily "Dhina Thanthi" with regard to sale of property situated at Flat No.G2, Sri Lakshmi Constructions, No.24, Sivavakkia Street, karthik Nagar Extension, Guduvancherry. On 03.01.2019, she has participated in the auction and was declared as the successful bidder. On the same day, she deposited a sum of Rs.1,40,000/- to the respondent's bank by way of demand draft. On the next day ie. 04.01.2019, the first respondent issued an auction confirmation letter and directed the petitioner to



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pay the further sum of Rs.2,12,500/- being 15% of the bid amount and the same was also paid. Pursuant to the same, she has received a copy of the title deed and plan. However, the valuer's report revealed that the said property has not been constructed in accordance with the approved building plan and Development Control Rules but the same was not mentioned in the auction notification. Therefore, she wrote a letter to the respondents 2 & 3, requesting to furnish all the relevant documents relating to the property. The third respondent stated that they have already furnished all the relevant documents before the auction and insisted for remitting the balance sum of Rs.10,57,000/- The petitioner has issued a legal notice to the respondents to refund the deposit amount of Rs.3,52,500/- along with interest at the rate of 24% by pointing out certain defects in the construction of property brought on auction sale. However, the amount has not been refunded by the respondents and therefore, she has come up with this writ petition for the aforesaid relief.

3. A counter affidavit has been filed by the first respondent by stating that the petitioner has inspected the property before participating in the auction sale. She is fully aware of the fact that the property is being brought under auction in "as is where is condition" and therefore even if there is any minor deviation in the construction of the property brought on auction sale, it



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will not affect the title to the property. Furthermore, there are eight flats in the apartment complex out of which one flat was brought on auction sale. There are seven other flat owners in the apartment complex and they are residing there notwithstanding the so-called minor deviation in the construction of the apartment complex. The petitioner, according to the first respondent, could not mobilise the balance sale price and therefore, she had sought for refund the amount already deposited by her by alleging that there is a deviation in the construction of the property brought for auction sale. In condition No.4 of the auction notification, it is clearly stated that in case of default on the part of the successful bidder, the deposit amount will be forfeited as per sub-Rule (5) of Rule 9 of the Security Interest (Enforcement) Rules, 2002 and the property shall be resold and the defaulting purchaser will forfeit his or her claim to the property or any part of the sum for which it may be subsequently sold. The petitioner, who has become a successful bidder, has committed default in payment of the balance amount and therefore, she has no right to seek for refund of the amount with interest. Above all, it was contended that the first respondent is not amenable writ jurisdiction inasmuch as they are private Scheduled bank and the writ petition itself is not maintainable as per the decision of the Honourable Supreme Court in the case of *Phoneix ARC Private Limited vs. Vishwa Bharati Vidyalaya Mandir and others* (Civil Appeal Nos.



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257 to 259 of 2022 dated 12.01.2022. Therefore, the first respondent Bank prayed for dismissal of the writ petition.

4. However, after making some arguments, the learned standing counsel appearing for the respondents fairly submitted that the amount paid by the petitioner will be refunded by the respondents with interest at the rate of 9% per annum from 04.01.2019 within a period of eight weeks from the date of receipt of a copy of this order. The said statement of the counsel for the respondents is recorded. Accordingly, this writ petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

[R.M.D., J.] [M.S.Q., J.]
14.03.2023

Index : Yes / No
Internet : Yes / No
av/rsh

To

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